

SINGAPORE REPORTS

H.L.B. v. COMPTROLLER OF INCOME TAX

[A.C.J. (Winslow J.) June 28, 1974]

[Singapore — District Court Appeal No. 29 of 1971]

Income Tax — Decision of Board of Review — Findings of fact — Whether appellate court has power to review — Costs — Exercise of discretion — Income Tax Act (Cap. 141), s. 81(2).

A decision by the Board of Review on the conclusion of fact which it has found proved by the facts it has ascertained is not open to review on appeal provided that the Board had before it evidence from which its conclusion could properly be drawn and secondly, provided that the Board did not misdirect itself in law in any of the forms of legal error amounting to misdirection.

Where the facts warrant a conclusion one way or the other the findings of the Board cannot be disturbed provided of course that the Board has not misdirected itself in law in reaching its conclusion.

Cases referred to:-

- (1) *Lysaght v. C.I.R.* 13 T.C. at p. 527.
- (2) *Edwards v. Bairstow & Harrison* 36 T.C. at p. 227.
- (3) *C.I.T. v. Q.R.S.* [1961] M.L.J. 276.

DISTRICT COURT APPEAL.

L. A. J. Smith for the appellant.

Sat Pal Khattar for the respondent.

Winslow J.: Although there are some 13 grounds of appeal herein, there are only two which involve questions of law, one which involves a question of discretion as to the costs awarded to the Comptroller, whilst of the remainder, two had already been withdrawn before the Board leaving substantially eight remaining grounds of appeal which involve mainly questions of fact. The latter cannot, therefore, by virtue of section 81(2) of the Income Tax Act, ordinarily form the basis of an appeal to the High Court from the Board's decision thereon. Some of these however were argued as though they were questions of mixed law and fact. I shall in due course deal with each of the grounds separately.

It is well established that a decision by the Board on the conclusion of fact which it has found proved by the facts it has ascertained is not open to review on an appeal provided that the Board had before it evidence from which its conclusion could properly be drawn and, secondly, provided that the Board did not misdirect itself in law in any of the forms of legal error amounting to misdirection (see per Viscount Sumner in *Lysaght v. Commissioners of Inland Revenue*⁽¹⁾). It is also clear that where the facts warrant a conclusion one way or the other the findings of the Board cannot be disturbed provided of course that the Board has not misdirected itself in law in reaching its conclusion.

This matter was fully explored by Lord Radcliffe in the House of Lords in *Edwards v. Bairstow & Harrison*⁽²⁾ et seq. and particularly at page 229 as more fully expounded by Wee Chong Jin J. as he then was in *C.I.T. v. Q.R.S.*⁽³⁾ Counsel for the Comptroller, in his written submissions at page 2, contends that this judgment lays down the proposition that where it is a case in which the facts warrant either way then the Board's finding cannot be upset on appeal. Lord Radcliffe himself, however, at page 227 excepts from this proposition the occasions "when the Commission-

A ers (like the Board) although dealing with a set of facts which would warrant a decision either way, show by some reason they give or statement they make in the body of the case that they have misunderstood the law in some relevant particular." As Lord Radcliffe further said at page 228:—

B "The true clue to the understanding of the position lies, I think, in recalling that the court can allow an appeal from the commissioners' determination only if it is shown to be erroneous in point of law."

Lord Radcliffe was concerned in that appeal with the interpretation of statutory language relating to "a profit arising from an adventure in the nature of trade" and concluded his judgment at page 231 by saying that the duty of the courts is:—

C "no more than to examine those facts found by the commissioners with a decent respect for the tribunal appealed from, and, if they think that the only reasonable conclusion on the facts found is inconsistent with the determination come to, to say so without more ado."

It may be useful to commence my decision on this appeal by reference to Ground (i) taken in conjunction with Ground (vii).

Grounds (i) and (vii)

It must be remembered that the Board was highly suspicious of a claim by the appellant that he had various amounts of money tucked away in his bedding and in the lining of his army overcoat and so on and for which he claimed credit under the item "Cash in Hand" shown from 1953 onwards.

Having tested his credibility on this point by arranging for an actual physical check for any money which he kept in his house as claimed, the Board appears to have been very surprised when that physical check revealed that his claim was true. The Board accordingly accepted his evidence for the reasons the appellant gave that he did in fact keep cash in hand from 1953 onwards as claimed in his statement at A3.

The Board went further to say that "he is the sort of person who may well do a physical check of his cash in hand which he said he did at the end of 1953 soon after he went into private practice." That evidence was accepted. The Board found that, "having regard to the way he lives his life, he kept a close check of his monies." In 1965 the Board found that he again made a physical check of his cash in hand and accepted the figure he gave as being the correct amount of his cash in hand as secreted in various places in his home. The Board accordingly directed that a new assets accretion statement should be worked out by the Comptroller who should give credit to the cash in hand stated by the appellant at A3.

This is the principal area of dispute and both counsel agree that it goes to the root of the whole appeal. The appellant now claims that, far from doing what the Board actually ordered the Comptroller to do, the document at RX, the new Assets Accretion Statement, prepared by the Comptroller after receiving his directions from the Board, does not give credit for cash in hand for 1953. I find it difficult to understand this complaint because an examination of this document at RX reveals that the Comptroller has followed the directions given by the Board.

In fact, in his present appeal, the appellant alleges that the Board when ordering that credit be given for the cash in hand, as claimed by him at A3, failed to order reduction of the additional expenses which the Board had ordered by reducing it to the level shown by the appellant himself.

Ground (vii) says that "the Board was wrong in law in that, having accepted calculated cash in hand as at 31st December in each year — knowing them to be calculated — failed to accept the calculations on which such cash in hand were based when they accepted additional expenses as stated in RX instead of accepting the appellant's own statement of expenses at A3".

In short, the complaint is that the Board knew that the figures claimed by the appellant at A3 as showing the cash in hand he hid in various parts of his house were calculated sums and that the Board should have realised that they were calculated sums and not sums reached by means of an actual physical check-up of what cash in hand he possessed each year.

As I have already set out earlier, the Board, in its own decision, did in fact decide that the appellant kept a careful check over the monies which he disclosed at A3 and claimed as cash in hand. The Board was under no obligation on the evidence to reach any other conclusion than that which it did, namely, that the cash in hand claimed by the appellant, was in fact not a calculated sum reached, after making deductions of the lower expenditure he claimed, but the actual monies he had in hand each year and which he claimed as cash in hand. It was a pure finding of fact and cannot properly ground an appeal.

I am not satisfied that the Board reached a conclusion which was not the only true and reasonable conclusion it could reach in all the circumstances of the appellant's case. The Board has not been shown to me to have misapplied the law or acted on any erroneous view of the law or under any misconception of what the law applicable to the facts should have been. There was no question of law for the Board to consider, if any. All the Board decided was that the appellant had been shown to be a frugal man who stacked his money away in hidden places in his house, that the physical check revealed that his claim was true and they gave him credit as he claimed on the basis of the figures he submitted not as calculated amounts but as actual amounts which he claimed he had in his house. He counted his money in 1953 and found he had \$13,057.87. The next time he counted it was in 1965 and he found he had \$2,809.97. He was given credit for these amounts at RX.

The Board was very fair in ordering credit to be given to his claim to cash in hand as stated at A3 for the intervening years between 1953 and 1965. After all, it was acting entirely on the check made on 28th July 1971 when some 10 or 11 thousand dollars were found in his house. The fact that such a sum of money was found in his house does not necessarily prove that he had the amounts claimed at A3 as cash in hand for each of the years other than 1953 and 1965 when he actually counted them or that those amounts were calculated by his auditors, who gave no evidence at all on this point, correctly or to the knowledge of the Board.

A As the Board found, however, even though he did not claim to have made a physical check of his cash in hand for 1954 to 1964 inclusive, "having regard to the way he lives his life, he kept a close check of his monies." The Board accordingly accepted his figures at A3 on this basis. I cannot say that it erred in law in doing so.

B As counsel for the Comptroller points out in his written submission, the finding of fact relating to the cash in hand as claimed by the appellant does not necessarily mean that the claim made by him regarding his expenses must also be accepted. By accepting his figures for cash in hand the Board was not, as I have said, accepting or acting on any calculations. Furthermore the Board specifically considered the question of his expenses against which he also appealed before the Board and the Board rejected his claim. In fact the Board, in respect of some expenses shown by the appellant, increased such living expenses instead of accepting his figures whilst rejecting other claims in respect of other forms of expenditure.

D *Grounds (ii) and (vi)*

E As to Grounds (ii) and (vi) relating to sums expended by the appellant on his 2 children in India, these involve pure questions of fact with which this court has no power to interfere. No question of law whatsoever is involved in relation to this issue. All the available evidence was overwhelmingly in favour of the Board's decision which was the only true and reasonable conclusion it could reach.

Grounds (iii) and (iv)

F Grounds (iii) and (iv) relate to the wife's cash in hand. Here again, the determination of this issue by the Board involves a pure finding of fact.

Ground (v)

G Ground (v) relates to the Board's calculation of the appellant's food and living expenses for the years 1956 to 1963. This again was a question of fact and there was ample evidence to justify the Board's finding. The Board was well aware that the appellant was a man of extremely frugal habits who would not spend one cent more than was necessary. It was for this reason that they gave him credit for the cash in hand he claimed after having carefully studied his habits and his way of life. It does not seem to me that it has acted under any erroneous view of the law in reaching the very reasonable conclusion that he must have spent, not \$50 a month on his food and other expenses during those years, but at least \$95 per month which is what in fact he was charged whilst he was working at the hospital for the food supplied to him and other expenses there. Having regard to the fact that \$95 p.m. was what was charged by the hospital in 1953 for these expenses incurred by him then, the Board seems to have been very fair in assessing that monthly figure in respect of the food consumed by him etc. for a period of 10 years subsequent to that year. As counsel for the Comptroller has pointed out, as the appellant has accepted a figure of \$200 for two people, after 1963 when he got married, there seems to be no valid ground for his objecting to the sum of \$95 for one person in earlier years.

Ground (viii)

I now turn to Ground (viii). This again relates to a finding of fact but I find the grounds of decision of the Board in this respect somewhat puzzling. With regard to this ground, the Board has stated: "The stand taken by the Comptroller is that these sums were expended by the appellant. We accept the appellant's evidence and say that this should not be taken into account. He is the sort of person who will not even part with one cent of his own. We accept his contention that his overseas travelling expenses were paid by his wife-to-be and so on, that is, his mother-in-law paid for the wedding dinner and all the rest."

When the Board reconvened all that appears on the record is that "on 18th August 1971 after hearing further evidence and submissions we dismissed the grounds of appeal 5, etc." Ground 5 before the Board is the present Ground (viii). Not one single reason is given for dismissing this ground of appeal after the Board's wholehearted acceptance of the appellant's evidence as to the sums expended on him by his wife-to-be and his mother-in-law as set out in its grounds of decision at page 55. In view of this acceptance of the appellant's earlier evidence I am unable to understand why the Board reversed itself on a finding of fact some days later. Nor has the Board given any reason for doing so.

Counsel for the Comptroller has tried to explain that the Board did not believe the appellant. That may well be so having regard to the fact that it dismissed the appeal on that ground at a later hearing. But at the hearing on 28th July, 1971 the Board did form a favourable impression of the appellant's veracity. It is therefore not possible for me to say, without knowing more about the reasons for the Board's reversal of its former decision, that the determination at which it finally arrived was the only true and reasonable conclusion it could have reached. It is not as if the Board made a decision firmly one way or the other.

I am unable to understand the Board's decision to dismiss this ground of appeal after accepting what he said earlier. If the Board did in fact announce on 28th July 1971 what it stated in relation to this ground on page 55 of the Record (in his favour) I find it difficult to understand why the Board was "prepared to hear the appellant," as stated on page 42, on 18th August 1971 and why the appellant "wanted to be heard" on this ground as stated in the last paragraph of page 56. This ground accordingly succeeds.

Ground (xii)

With regard to ground (xii) which raises questions of law on which an appeal properly lies, the amounts concerned are trivial and the Board at first left it "to the parties to resolve and if they cannot, then put it in red in the new assets accretion statement." Later, it dismissed this ground without setting out reasons for doing so.

Having regard to the trivial amount involved, I see no merit in this ground. I must say, however, that I agree with the written submissions made on behalf of the Comptroller and the course proposed by the Comptroller therein.

A Ground (xiii)

With regard to ground (xiii) relating to costs before the Board, the award of 50% thereof to the Comptroller was, in my view, an exercise of discretion which has not been shown to me to be wrong in principle or unreasonable in all the circumstances.

B All the grounds of appeal except ground (viii) are accordingly dismissed.

Order accordingly.

Solicitors: *L. A. J. Smith.*

C**HELEN HO QUEE NEO v. LIM PUI HENG**

[C.A. (Wee Chong Jin C.J., Winslow & Tan Ah Tah JJ.)

July 22, 1974]

[Singapore — Civil Appeal No. 10 of 1974]

Family Law — Divorce — Custody of child — Given to guilty respondent husband — Appeal by wife — Principles of orders for custody discussed — Custody different from care and control — Women's Charter (Cap. 47), s. 113 — Guardianship of Infants Act (Cap. 22), s. 3.

D

The parties were divorced, the appellant wife having obtained the decree on the ground of the husband's cruelty. The judge made an order for the custody of their only child, a boy, aged 6, to be given to the respondent husband. The judge took into account the fact that the appellant wife was not working and had no income and that the child had been looked after most of the time by the respondent husband's mother. The appellant contended that the respondent had frustrated her wishes to bring up the child herself. The appellant had originally been forced to leave the matrimonial home and the circumstances did not show any intention on her part to abandon the child.

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Held: (1) all relevant factors have to be considered including the conduct of the parties and their characters, bearing in mind that the welfare of the child is the first and paramount consideration. No hard and fast rule can be laid down based on the sex of the parent or the child as to who should have its care and control and/or custody;

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(2) the expression "custody" does not mean an indivisible whole, it is divisible into constituent elements which could enable the court to give care and control of a child to one parent and to give access and the remaining constituent elements of custody to the other;

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(3) having considered all the facts, the proper order to make was to reverse the order for the custody of the child and order that the appellant should have the custody including care and control over the child and responsibility for its upbringing.

Cases referred to:-**H**

- (1) *J. v. C.* [1970] A.C. 668.
- (2) *Jussa v. Jussa* [1972] 2 All E.R. 600.
- (3) *Re W. (J.C.)* [1963] 3 All E.R. 459.
- (4) *Wakeham v. Wakeham* [1954] 1 All E.R. 434.
- (5) *Re F.* [1969] 2 All E.R. 766.
- (6) *Re C(A) (an infant)* [1970] 1 All E.R. 311.
- (7) *Tey Leng Yeow v. Tan Poh Hing & Anor.* [1973] 2 M.L.J. 53.

COURT OF APPEAL.**I**

J. Grimberg for the appellant.

Francis Khoo for the respondent.

Winslow J. (delivering judgment of the Court): This is an appeal against the decision of a judge who, having, in open court, granted a decree nisi in September 1973 to the appellant/wife on the ground of her husband's cruelty on an uncontested divorce petition,